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Federal Communications Commission
Office of the Secretary

File No. BPH-910430MB

THRESHOLD SHOWING CONCERNING BROADCAST RECORD

Under the Policy Statement on Comparative Broadcast Hearings, 1 FCC 2d. 393, 398 (1965), the Commission will consider an applicant's past broadcast record only if it is either "unusually good or unusually poor." This Threshold Showing will demonstrate that Normandy's broadcast record as the licensee of

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List A B C D E

076

WYLR has been unusually poor because WYLR has failed to provide substantive programming addressing issues facing its community during the past license term.

Although the Commission has eliminated requirements that stations air minimum amounts of non-entertainment programming, it continues "to recognize the obligation of commercial radio broadcasters to provide coverage concerning issues of importance facing their communities." Deregulation of Radio, 104 FCC 2d. 505, 506 (1986). A licensee is thus still required to maintain a quarterly Issues/Programs list that reflects its "most significant programming treatment" of issues as determined by "the broadcaster's good faith judgement." Id. at 507.

Attached hereto as Exhibit 1 are WYLR's Issues/Programs lists from 1987 through the first quarter of 1990.^{1/} Below is a summary of these lists which demonstrates that WYLR's programming does not reflect attention to the ascertained issues of importance facing its community of service. In fact, the lists show that WYLR has aired virtually no public service programming at all since at least January 1, 1987.

1987

| | | |
|-------------|---|---|
| 1st Quarter | : | No FM programs |
| 2nd Quarter | : | No FM programs |
| 3rd Quarter | : | One 2-1/2 hour program* and public service announcements (PSAs) over the July 4th holiday |
| 4th Quarter | : | No FM programs |

^{1/} The attached Issues/Programs lists for WYLR are part of the record in MM Docket No. 90-181. See Note 3 below.

1988

1st Quarter : No FM programs
2nd Quarter : Two hour broadcast of radiothon and
promotions about the event during one month
3rd Quarter : No FM programs
4th Quarter : PSAs; one live simulcast of a benefit concert

1989

1st Quarter : No list exists for this quarter
2nd Quarter : PSAs; no substantive FM programs
3rd Quarter : PSAs; one live simulcast of a rock concert
4th Quarter : PSAs; one 4 hour live remote*

1990

1st Quarter : PSAs; live remotes totalling less than 25
hours*^{2/}

Based on these Issues/Programs lists, an issue was specified against Normandy in the Queensbury FM proceeding (MM Docket 90-181) to determine whether Normandy had an unusually poor broadcast record with respect to Station WYLR. See Memorandum Opinion and Order FCC 90M-2791, released September 6, 1990.^{3/} Normandy had the opportunity in the Queensbury FM proceeding to present evidence to show that its programming was satisfactory, but it failed to do so. See Barry Skidelsky 6 FCC Rcd. 2221 at Note 3 (ALJ 1991). In addition, Normandy's President, Christopher Lynch, conceded at several points in the Queensbury

^{2/} The Issues/Programs lists cover both Normandy's AM and FM stations. It was established at the hearing in MM Docket 90-181 that the most commonly listed program, "Speak Up," aired only on the AM station. For some of the other programs, the station over which they aired is not listed. These are indicated with an asterisk (*).

^{3/} The Issues/Programs lists are part of the record in MM Docket No. 90-181, as an attachment to the Petition to Enlarge Issues filed in that proceeding by Bradmark Broadcasting Company on June 28, 1990.

hearing that WYLR's public service programming was inadequate.

Specifically Lynch admitted:

- That public service announcements aired by WYLR were minimal. Normandy Exhibit at 8; Transcript at 733-34.
- That Normandy made no efforts to develop and air WYLR programs responsive to community problems. Transcript at 1019-1020.
- That Normandy's public file does not contain a list of issues concerning community. Transcript at 667-670.

In the Initial Decision in the Queensbury FM proceeding, Barry Skidelsky, supra, the ALJ held that Normandy was not basically qualified and, thus, its application was not eligible for comparison. Therefore, the ALJ did not reach a conclusion on the issue of Normandy's poor broadcast record. Id. at n.3. However, the ALJ did note with respect to Normandy's programming that "it is doubtful that Normandy carried any public affairs programming on WYLR" and that "the record does not reflect programming designed to discuss issues of public importance on WYLR." Id. On appeal, the Review Board upheld Normandy's disqualification and, thus, also did not reach the issue of whether Normandy's broadcast record at WYLR was unusually bad. Barry Skidelsky, FCC 91R-115 (released, January 2, 1992).

The fact that the an issue was added in the Queensbury FM proceeding to determine whether Normandy's broadcast record with respect to WYLR was unusually bad, combined with the ALJ's observations regarding the evidence with respect to WYLR's performance, establish a prima facie case that WYLR's programming has fallen far short of what is expected of a Commission licensee. Moreover, the Issues/Programs lists themselves attest

to nearly a complete absence of substantive public service programming on Normandy's FM station.

Accordingly, Brandt should be permitted to adduce evidence as to Normandy's unusually poor broadcast record at WYLR under the standard comparative issue.

Respectfully submitted,

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Date: February 24, 1992

CERTIFICATE OF SERVICE

I, Alethea R. Wilson, a secretary in the law office of Arent, Fox, Kintner, Plotkin & Kahn do hereby certify that a copy of the foregoing **THRESHOLD SHOWING CONCERNING BROADCAST RECORD** has been sent via U.S. Mail, First-Class postage prepaid this 21st day of February, 1992 to the following:

*Administrative Law Judge
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Federal Communications Commission
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Paulette Laden, Esq.
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Christopher P. Lynch, President
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Alethea R. Wilson

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EXHIBIT A

QUARTERLY ISSUES/PROGRAMS LIST

| <u>Issue</u> | <u>Program</u> | <u>Description</u> | <u>Time</u> | <u>Date</u> | <u>Duration</u> |
|----------------------|---------------------------------|--|--------------------|--------------------|-----------------|
| Fire Prevention | Speak Up (Call-in Talk Show) | Fire Marshall appeared, discussing preventative methods of fire in regard to woodstoves, and answering questions regarding fire prevention. | 10-10:30AM | 2/27/87 | 1/2 hr. |
| Governmental (State) | Speak Up | New York State Assemblyman appeared giving current information and answering questions and complaints from listeners, in regard to State matters. | 10-11AM 10-11AM | 2/25/87 3/27/87 | 1 Hr. 1 Hr. |
| Dredging of PCB's | Speak Up | Representatives from CEASE, opposing dredging of PCB'S by New York State from Hudson River. | 10-11AM | 2/13/87 | 1 Hr. |

WWSC-AM (Glens Falls, N.Y.)

QUARTERLY ISSUES/PROGRAMS LIST

Date: 4/10/87 For period: Jan.-Mar. 1987

| <u>Issue</u> | <u>Program</u> | <u>Description</u> | <u>Time</u> | <u>Date</u> | <u>Duration</u> |
|--|---------------------------------|--|-------------|-------------|-----------------|
| Governmental (City) | Speak Up (Call in Talk Show) | The Mayor of Glens Falls tells | 10-11AM | 1/20/87 | 1 Hr. |
| | | residents of City what is going | 10-11AM | 3/17/87 | 1 Hr. |
| | | on, takes suggestions and complaints from listeners. | | | |
| New income tax laws | Speak Up | Don Roberts of the IRS answers | 10-11AM | 1/26/87 | 1 Hr. |
| | | questions and gives out all | 10-11AM | 2/23/87 | 1 Hr. |
| | | information to prepare income tax returns. | | | |
| Commercial radio services to public | Speak Up | "Ask the Managers" with President | 10-11AM | 1/14/87 | 1 Hr. |
| | | and Station Manager both discussing | 10-11AM | 2/11/87 | 1 Hr. |
| | | policies of station in regard to | 10-11AM | 3/11/87 | 1 Hr. |
| | | programming, p.s.a.'s, and asking | | | |
| | | audience for suggestions and/or complaints of services. | | | |
| Consumer Frauds | Speak Up | Assistant to New York State Attorney | 10-11AM | 1/28/87 | 1 Hr. |
| | | General's office answers questions | 10-11AM | 2/23/87 | 1 Hr. |
| | | and gives advice on consumer problems | 10-11AM | 3/26/87 | 1 Hr. |
| | | from audience. | | | |

WISC-AM (Glens Falls, N.Y.)
 QUARTERLY ISSUES/PROGRAMS LIST

Date: 4/10/87 For period: Jan. - March, 1987

| <u>Issue</u> | <u>Program</u> | <u>Description</u> | <u>Time</u> | <u>Date</u> | <u>Duration</u> |
|------------------|----------------|---|-------------|-------------|-----------------|
| Animal Pound | Newscasts | Residents of Kingsbury and Fort Edward heard several interviews on issues surrounding a local dog pound. State inspection practices came into question as did the level of care for dogs at the unheated barn. News of the situation helped to shape plans for a new pound. | hourly | 1/14/87 | 1-2 mins. |
| Earltown Project | Newscasts | Coverage of announcement of 880 acre "planned unit development" in Queensbury included interview with the developer and environmentalists fearing the project will harm sensitive wetlands. | hourly | 3/7/87 | 1-2 mins. |

EXHIBIT B

QUARTERLY ISSUES/PROGRAMS LIST

Date: 7/10/87 For period: April-June 1987

| <u>Issue</u> | <u>Program</u> | <u>Description</u> | <u>Time</u> | <u>Date</u> | <u>Duration</u> |
|-----------------|---------------------|---|-------------|-------------|-----------------|
| Mental Health | Speak Up | Local physcologist discusses | 10-11AM | 4/8/87 | 1 Hr. |
| | (Call-in Talk Show) | divorce, children's problems | 10-11AM | 6/2/87 | 1 Hr. |
| | | and a variety of other mental | 10-11AM | 6/29/87 | 1 Hr. |
| | | health problems. Listeners | | | |
| | | call in for advice. | | | |
| Consumer Frauds | Speak Up | Assistant to Attorney General of | 10-11AM | 4/22/87 | 1 Hr. |
| | | New York State appears to answer | 10-11AM | 5/20/87 | 1 Hr. |
| | | questions and give current data on | 10-11AM | 6/22/87 | 1 Hr. |
| | | consumer problems. | | | |
| Drug Abuse | Remote | Full broadcast of substance abuse program | 7-9PM | 6/6/87 | 2 Hrs. |
| | | with Robert Eckert from Paul Smith's, | | | |
| | | N.Y.at the Queensbury Hotel, Glens Falls, | | | |
| | | N.Y., sponsored by the Glens Falls | | | |
| | | Substance Abuse Task Force. Approxi- | | | |
| | | mately 70 people attended. | | | |
| Women's rights | Speak Up | President of the International Federa- | 10-10:30AM | 5/5/87 | 1 Hr. |
| | | tion of Women appeared to answer | | | |
| | | questions and give out new information | | | |
| | | on the rights of women, especially in | | | |
| | | the employment field. | | | |

WISC-AM (Glens Falls, N.Y.)
QUARTERLY ISSUES/PROGRAMS LIST

Date: 7/10/87 For period: April - June, 1987

[illegible]

WISC-AM (Glens Falls, N.Y.)
QUARTERLY ISSUES/PROGRAMS LIST

Date: 7/10/87 For period: April - June, 1987

| <u>Issue</u> | <u>Program</u> | <u>Description</u> | <u>Time</u> | <u>Date</u> | <u>Duration</u> |
|----------------|----------------|---|-------------|-------------|-----------------|
| Moratorium | Newscasts | Examination of reasons the Town of Queensbury imposed a moratorium on new subdivisions. The fast-growing community's residents voice concern the quality of living might be harmed without tighter controls. | hourly | 4/30/87 | 1-2 mins. |
| Milfoil | Newscasts | After 24 days of testimony, coverage of the permit hearing on chemical control of milfoil weeds in Lake George concluded. During the hearing, interviews were conducted with state and local parties on both sides of the issue. | hourly | 5/5/87 | 1-2 mins. |
| Flight Service | Newscasts | Local pilots say closing the airport Flight Service Station will make local aviation unsafe. County and local commerce/ tourism/ aviation officials offered their opinions of the closing's effect on safety and airport use. | hourly | 6/13/87 | 1-2 mins. |

EXHIBIT C

QUARTERLY ISSUES/PROGRAMS LIST

Date:10/10/87 For period: July-September 1987

| <u>Issue</u> | <u>Program</u> | <u>Description</u> | <u>Time</u> | <u>Date</u> | <u>Duration</u> |
|----------------------------|----------------|---|-------------|-------------|-----------------|
| (Cont.) BLOODMOBILE (WASC) | | and encouraging. Reports from the bloodmobile dealt with consciousness of the issue--need, in addition to more education and encouragement. 117 donors, 7 deferrals. | | | |
| Heart Disease | Speak Up | The Chief Therapeutic Dietitian of the local hospital appeared to give information regarding dietary needs, along with other information from the American Heart Assoc. | 11-11:30AM | 9/14/87 | ½ Hr. |
| Problems of the elderly | Speak Up | Director of Glens Falls Transit Co. discussed transportation available to elderly and handicapped. Also advised of new schedules. | 11AM-Noon | 9/18/87 | 1 Hr. |
| Drugs | Speak Up | A volunteer and the director of Giant Step Hotline appeared to promote the hotline, especially for area youth. | 11-11:30AM | 9/21/87 | ½ Hr. |
| Consumer Frauds | Speak Up | Assistant to State Attorney General appeared, answering complaints and questions regarding consumer frauds. | 11AM-Noon | 9/23/87 | 1 Hr. |

QUARTERLY ISSUES/PROGRAMS LIST

Date: 10/10/87 For period: July - September 1987

| <u>Issue</u> | <u>Program</u> | <u>Description</u> | <u>Time</u> | <u>Date</u> | <u>Duration</u> |
|-----------------|------------------|--|-------------|-------------|----------------------------|
| Government | Speak Up | New York State Assemblyman gives audience latest information and answers pertinent questions. | 11AM-Noon | 8/27/87 | 1 hr. |
| City Government | Speak Up | City of Glens Falls Mayor answers complaints and questions regarding city problems. | 11AM-Noon | 8/28/87 | 1 hr. |
| Diabetes | Speak Up | Discussion of the disease, research into the cure, with by phone, an MD who is an expert on the topic, and in the studio, two people who are diabetics. | 11AM-Noon | 8/31/87 | 1 hr. |
| Economy | Speak Up | Representative from stock brokers firm discussing best way to invest and answering questions from audience. | 11AM-Noon | 9/3/87 | 1 hr. |
| Blood shortage | WISC Bloodmobile | Announcements | 24 hrs/ | 8/23-9/4/87 | 250:60:30 announcements |
| | | Live Reports | 10AM-4PM | 9/4/87 | 3-5Min. |
| | | Bloodmobile: WISC sponsor a bloodmobile annually. This year three types of blood were totally depleted in the Albany blood bank. Announcements pointed out the safety in giving blood with the general overall intent of educating | | | |

QUARTERLY ISSUES/PROGRAMS LIST

Date:10/10/87 For period: July - Sept. 1987

| <u>Issue</u> | <u>Program</u> | <u>Description</u> | <u>Time</u> | <u>Date</u> | <u>Duration</u> |
|---|----------------|--|---------------|-------------|-----------------|
| Unemployment | Speak Up | Representative from Department of Labor discussing Shared Work Program and answering questions about unemployment insurance | 11-11:30AM | 8/3/87 | ½ hr. |
| Garbage disposal & controversy surrounding a proposal to build a mass-burn plant in listening area. | Public Affairs | An information forum with an audience with a panel of Encon Director, Executive Director of the State Legislative Commission on Solid Waste Management, vice-president of the company proposing the burning plant, representatives of local groups opposed to the plant, and others. | 6:30Pm to 9PM | 8/11/87 | 2½ hrs. |
| Elderly activities | Speak Up | Representative from the Senior Games discussing and urging senior citizens to participate and/or become involved with this sports program for Senior Citizens. locally. | 11-11:30AM | 8/17/87 | ½ hr. |
| Government | Speak Up | Senator Joe Bruno answered questions and gave out information to the audience on state government issues. | 11AM-Noon | 8/14/87 | 1 hr. |

QUARTERLY ISSUES/PROGRAMS LIST

Date: 10/10/87 For period: July - Sept. 1987

| <u>Issue</u> | <u>Program</u> | <u>Description</u> | <u>Time</u> | <u>Date</u> | <u>Duration</u> |
|-----------------|----------------|--|-------------|-------------|-----------------|
| Mental Health | Speak Up | Listeners may call in with questions regarding mental health problems. A local psychologist gives the latest information on stress, divorce, children's behavior, etc. | 10-11AM | 7/7/87 | 1 Hr. |
| Drunk Driving | P.S.A.'s | 35 p.s.a.'s covering 4th of July Drunk Driving info. | | 7/3 to 7/6 | |
| Governmental | Speak Up | New York State Assemblyman appeared giving information and answering questions from the audience relative to state and local matters. | 10-11AM | 7/9/87 | 1 Hr. |
| Consumer Frauds | Speak Up | Assistant to Attorney General of N.Y. State appeared answering questions from audience and helping them with their inquiries regarding complaints and consumer problems. | 11AM-Noon | 7/20/87 | 1 hr. |

10/10/87

EXHIBIT D

QUARTERLY ISSUES/PROGRAMS LIST

Date: 1/10/88 For period: October-December 1987

| <u>Issue</u> | <u>Program</u> | <u>Description</u> | <u>Time</u> | <u>Date</u> | <u>Duration</u> |
|------------------------------|----------------|---|-------------|-------------|-----------------|
| Local Elections | Speak Up | Republican candidate for Queensbury Town Supervisor gave his platform and answered questions from audience. | 1-2PM | 10/2/87 | 1 Hr. |
| Mental Health | Speak Up | Local psychologist discusses health problems; such as depression, marital, children's & teen-ager's problems, etc. Takes calls from listeners, voicing their own particular problems. | 1-2PM | 10/6/87 | 1 Hr. |
| Finances/Stocks and Bonds | Speak Up | Local stockbroker discusses recent troubles in stock market. Advises and informs listeners who call in various ways of investing. | 1-2PM | 10/7/87 | 1 Hr. |
| Local Elections | Speak Up | Citizens Party Candidate for Queensbury Town Supervisor gave his platform and answered questions from audience. | 1-2PM | 10/16/87 | 1 Hr. |

QUARTERLY ISSUES/PROGRAMS LIST

Date: 1/10/87 For period: October-December 1987

2

| <u>Issue</u> | <u>Program</u> | <u>Description</u> | <u>Time</u> | <u>Date</u> | <u>Duration</u> |
|---|---------------------------|---|---------------|-------------|-----------------------------------|
| Youth Activities | Speak Up | Dr. Rick Herlinger, Sports Psychologist, talked about the psychology of athletes in high school sports activities. Answered questions from audience. | 1-2PM | 10/19/87 | 1 Hr. |
| Poverty | Speak Up | Representatives from Operation Santa Claus appeared, explaining their annual fund-raisers to obtain funds for needy families of the tri-Counties. Food, clothing and toys are distributed during Christmas. | 1-2PM | 10/28/87 | 1 Hr. |
| Governmental | Speak Up | State Assemblyman, Bobby D'Andrea appeared, giving latest info re N.Y. State laws, answering questions from audience. | 1-2PM | 10/29/87 | 1 Hr. |
| Finances/Stocks and Bonds | Speak Up | Local stockbroker discussed stock market problems and took calls from concerned listeners. | 1-2PM | 11/4/87 | 1Hr. |
| Poverty & Learning (See next page for continuation!) | WISC Garage Sale and More | The annual WISC Garage Sale and More, held at the Glens Falls Civic Ctr. and broadcast from 9:30 AM to | 9:30AM to 6PM | 11/8/87 | 8½ Hrs. Plus 4 weeks campaign. |

QUARTERLY ISSUES/PROGRAMS LIST

Date: 1/10/87 For period: October-December 1987

| <u>Issue</u> | <u>Program</u> | <u>Description</u> | <u>Time</u> | <u>Date</u> | <u>Duration</u> |
|--------------------------------------|----------------|--|-------------|-------------|-----------------|
| <u>Cont.</u> WWSC Garage Sale & More | | Proceeds from entrance fee (\$1.00) and the exhibitor's booth rental fees are applied to WWSC's charitable project, which provides food for less fortunate families at Christmas, distributed by the local Voluntary Action Center, and for WWSC's scholarships in journalism, given to 15 area high school students. WWSC this year received President Reagan's C-Flag Award for this project. | | | |
| Problems of Elderly | Speak Up | Administrator for Social Security appeared giving latest info on benefits, etc. and answering questions from audience on personal problems. | 1-2PM | 11/12/87 | 1 Hr. |
| Local Government | Speak Up | Glens Falls Mayor appeared giving updates of City's problems and ventures. Answered questions from audience. | 1-2PM | 11/17/87 | 1 Hr. |
| Consumer Problems | Speak Up | Representative from N.Y. State Atty.'s General's office discussed consumer problems and timely Christmas purchases (exchanges, etc). Took calls from audience answering their personal questions. | 1-2PM | 11/25/87 | 1 Hr. |

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EXHIBIT E